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BY ECF

The Hon. Katherine B. Forrest
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *United States v. Wedd et al.*, 15-cr-616 (KBF)

Dear Judge Forrest:

Yesterday evening, the government submitted its opposition to Defendants' motion (ECF Nos. 406-07) to dismiss the new indictment's aggravated identity theft charges. Mindful of the embargo on *in limine* motion "replies" (ECF No. 370), I write to address two issues surfaced in the government's papers.

First, the courts of appeals do not appear to be split on the meaning of "uses" in 18 U.S.C. § 1028A(a)(1). (Govt. Opp'n., ECF 415, at 6.) Two circuits – the Sixth and First – have considered the issue; *both* have "read the term [] to require that the defendant attempt to pass him[self] . . . off as another person or purport to take some [] action on another[s] behalf." *U.S. v. Berroa*, 856 F.3d 141, 156 (1st Cir. 2017); *see id.* (identifying the Sixth as "the only other circuit to have addressed the issue[]"). The authorities cited in *U.S. v. Naranjo*, 645 Fed. Appx. 50 (2d Cir. 2016) answer a different question: whether a defendant who obtained permission to "possess[], transfer[], or use[]" another person's ID may nevertheless be convicted under § 1028A. They have no bearing on Defendants' motion.

Second, nothing in § 1028A or the cases interpreting it suggests a distinction between "name[s]," "numbers" or any other "means of identification." (Govt. Opp'n at 5-6.) Thus, while *U.S. v. Miller*, 734 F.3d 530 (6th Cir. 2013) involved names, its holding applies to "addresses," *Berroa*, 856 F.3d at 155, and Medicare "Identification Numbers," *U.S. v. Medlock*, 792 F.3d 700, 705 (6th Cir. 2015), alike.

Defendants look forward to amplifying these points, and those set out in our moving papers, at oral argument.

Respectfully,

/s/

Jonathan Savella